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**By ECF**

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Honorable Vernon S. Broderick, United States District Judge  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 415  
New York, NY 10007

Re: **Joshua Bernstein vs. Jay Chernikoff**  
**Case No. 1:14-cv-02540-VSB**

**Request for Pre-Motion Conference Regarding Defendant's  
Motion to Dismiss for Improper Venue or, in the Alternative,  
to Transfer Venue to the District of Arizona**

Dear Judge Broderick:

I am counsel for Defendant Jay Chernikoff ("Chernikoff") in the above-referenced civil action which was recently removed to this Court from the Supreme Court of the State of New York, County of Westchester (the "State Court"). On behalf of Chernikoff, I am writing to request a pre-motion conference regarding Chernikoff's *Motion to Dismiss for Improper Venue or, in the Alternative, to Transfer Venue to the District of Arizona* ("Motion to Dismiss").

**Request for Pre-Motion Conference**

Chernikoff is the sole remaining defendant in this action. Chernikoff is, and at all relevant times was, domiciled in and is a resident and citizen of the State of Arizona. Plaintiff Joshua Bernstein ("Plaintiff") is, and at all relevant times was, domiciled in and is a resident and citizen of the State of New York. When Plaintiff originally filed his Amended Complaint against Chernikoff in the State Court, Plaintiff also named Mansard Realty Partners, LLC ("Mansard") as a defendant, and alleged that Mansard maintained an office in the State of New York. Consequently, diversity of citizenship did not exist at that time. However, Plaintiff recently voluntarily dismissed Mansard as a defendant.



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Upon dismissal of Mansard as a defendant, Chernikoff removed the case to this Court pursuant to 28 U.S.C. § 1441. This Court now has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because (a) this action is between citizens of different States and (b) the asserted amount in controversy exceeds \$75,000.

Because Chernikoff, as the only remaining defendant in the action, resides in Arizona, venue of this action is only proper in Arizona, not in New York, pursuant to 28 U.S.C. § 1391(b)(1). Accordingly, because venue is improper in New York, this case should be dismissed pursuant to Rule 12(b)(3), Federal Rules of Civil Procedure.

Alternatively, because (i) Chernikoff resides in Arizona and, therefore, venue is only proper in Arizona, (ii) the alleged properties at issue in this case are located primarily in Arizona, (iii) the alleged transactions at issue in this case primarily occurred, if at all, in Arizona, and (iv) the primary witnesses and evidence in this case are located primarily in Arizona, this case should be transferred to the District of Arizona pursuant to 28 U.S.C. § 1404, if it is not dismissed pursuant to Rule 12(b)(3), F.R.C.P.

Accordingly, Chernikoff requests permission to file a motion to dismiss this case for improper venue or, in the alternative, for a transfer of this case to the District of Arizona.

#### **Stay of Chernikoff's Obligation to Respond to the Amended Complaint**

Chernikoff moved to dismiss Plaintiff's initial Complaint in State Court for failure to state a claim. In response to that motion to dismiss in State Court, Plaintiff filed an Amended Complaint on March 20, 2014. Chernikoff has not yet filed an answer or other responsive pleading addressing the Amended Complaint. Rather, Chernikoff removed this case to this Court on April 10, 2014. Pursuant to Rule 81(c)(2)(C), F.R.C.P., Chernikoff has seven (7) days from the date that the notice of removal was filed to answer or otherwise respond to the Amended Complaint.

However, pursuant this Court's *Individual Rules & Practices in Civil Cases*, Rule 4.A., Chernikoff's submission of this pre-motion letter seeking leave to file his pre-answer Motion to Dismiss automatically stays Chernikoff's "obligation to answer or move against" the Amended Complaint through the date of the pre-motion conference.

Sincerely,

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Jason A. Nagi